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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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NO. _____

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
8/10/2021
DEANA WILLIAMSON, CLERK

NOEL CHRISTOPHER HUGGINS,
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the 10th Court of Appeals
Cause No. 10-19-00096–CR

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

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Identity of Judge, Parties and Counsel

Appellant, pursuant to Rule of Appellate Procedure 68.4(a), provides the following list of the trial court judge, all parties to the trial court's judgment, and the names and addresses of all trial and appellate counsel.

THE TRIAL COURT:

Hon. Lee Harris — Trial Court Judge
66th District Court, Hill County
P.O. Box 284
Hillsboro, Texas 76645-0284

THE DEFENSE:

Noel Christopher Huggins — Appellant

Gregg W. Hill — Former Trial Counsel for Appellant
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THE PROSECUTION:

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Assistant District Attorney

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Hillsboro, Texas 76645

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Statement Regarding Oral Argument

Oral argument will aid the decisional process. This appeal presents several unique features of both the constitutional and statutory rights to self-representation and of the concomitant constitutional and statutory rights to withdraw a prior waiver of counsel. Oral argument will permit an extend discussion and interchange between counsel and the judges about these constitutional and statutory rights and the requirements that trial courts must follow to ensure that they are scrupulously furnished to criminal defendants.

Statement of the Case

Appellant pleaded guilty to possession of methamphtetamine after choosing to represent himself. When he changed his mind and asked for appointed counsel, the trial court denied his request. The court sentenced him to 18 years' imprisonment. The court of appeals affirmed, rejecting Appellant's contentions that the trial court denied him the statutory right to withdraw his waiver of counsel "at any time" and failed to admonish him about the dangers and disadvantages of self-representation.

Statement of Procedural History

The Court of Appeals affirmed in a unanimous decision authored by Justice Johnson that was handed down July 7, 2021. *Huggins v. State*, No. 10-19-00096-CR, 2021 WL 2827931 (Tex. App.—Waco July 7, 2021, pet. filed).

No motion for rehearing was filed.

Ground for Review

1. Is the statutory right to withdraw a waiver of counsel under article 1.051(h) absolute or subject to restrictions?

2. What admonishments does *Faretta* (or article 1.051) require for a defendant who initially contests guilt but later pleads guilty?

3. Did the court below correctly conclude that no *Faretta* admonishments were required where Appellant initially contested his guilt?

Reasons for Review

The Court should grant review for several reasons, including: (1) the decision of the court below conflicts with the decision of the First Court in *Walker* regarding a defendant's statutory right to withdraw a waiver of counsel "at any time"; (2) the court below has decided important questions of state and federal law that have not been, but should be, settled by this Court regarding appropriate *Faretta* admonishments and construction of article 1.051; (3) the decision of the court below apparently conflicts with the applicable decisions of the Supreme Court, namely, *Faretta*, *Patterson*, and *Tovar*; and (4) the court below appears to have misconstrued article 1.051(h). *See* TEX. R. APP. P. 66.3.

Summary of Argument

This appeal offers the Court an opportunity to construe article 1.051(h) which allows a defendant who has waived the right to counsel and chosen to represent himself to withdraw the prior waiver of counsel "at any time." The Court has never construed this particular provision.

The appeal also affords the Court the opportunity to address the admonishments required by *Faretta* in cases and proceedings other than contested trials on the merits.

Appellant sought to withdraw his waiver of counsel during voir dire, but the trial court refused. The court below held that the trial court did not abuse its discretion even though article 1.051(h) plainly states that a defendant may withdraw his waiver "at any time." Is this statutory right absolute or subject to common law restrictions that have been held to apply to the Sixth Amendment right to withdraw a prior waiver?

The trial court never admonished Appellant about the dangers and disadvantages of self-representation even though he contested his guilt for nearly 2 years and until the day of trial. Appellant also represented himself in a contested sentencing hearing. Does *Faretta* require admonishments under these circumstances?

Argument

1. Is the statutory right to withdraw a waiver of counsel under article 1.051(h) absolute or subject to restrictions?

Article 1.051(h) of the Code of Criminal Procedure provides that a defendant who has waived counsel and chosen to represent himself may withdraw that waiver of counsel "at any time." The statute provides no qualifications, limitations or restrictions on this statutory right. The court below erred by engrafting restrictions on this statutory right.

A. Article 1.051 permits withdrawal of a waiver of counsel "at any time"

The Legislature first enacted article 1.051, which governs the right of self-representation, in 1987. Act of May 30, 1987, 70th Leg., R.S., ch. 979, § 1, 1987 Tex. Gen. Laws 3321, 3321-22 (amended 2001).

From the beginning, this statute has permitted defendants who waived counsel and chose to represent themselves to "withdraw a waiver of the right to counsel **at any time**." 1987 Tex. Gen. Laws at 3322 (emphasis added); *see Walker v. State*, 962 S.W.2d 124, 127-28 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd). The current version remains unchanged. TEX. CODE CRIM. PROC. art. 1.051(h).

The original and current versions of article 1.051(h) provide in their entireties:

> A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Id.; 1987 Tex. Gen. Laws at 3322.

B. The Amarillo Court in *Medley* developed limitations on a withdrawal of a waiver of the Sixth Amendment right of counsel

Apart from the statutory right of self-representation, the Supreme Court recognized in *Faretta* that a defendant has a Sixth Amendment right to self-representation. *Faretta v. California*, 422 U.S. 806, 834-35 (1975).

The Amarillo Court confronted the issue of when a defendant who has chosen to represent himself after being duly admonished may withdraw his waiver of the Sixth Amendment right to counsel. The court made clear that it was addressing only the Sixth Amendment right to counsel. *Medley v. State*, 47 S.W.3d 17, 24 n.4 (Tex. App.—Amarillo 2000, pet. ref'd).

The court relied on this Court's decision in *Marquez* where this Court established requirements for withdrawal of a jury waiver. *Id.* at 24 (citing *Marquez v. State*, 921 S.W.3d 217, 223 (Tex. Crim. App. 1996)). The Amarillo

Court thus held that a defendant representing himself may only withdraw his waiver of counsel by doing so "sufficiently in advance of trial" and by showing "that granting the request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State." *Id.*; *accord Jordan v. State*, No. 08-05-00286-CR, 2007 WL 1513996, at *5-6 (Tex. App.—El Paso 2007, pet. ref'd).

C. Several courts have applied *Medley* to article 1.051(h)

Since *Medley*, several courts—including the court below—have discussed the *Medley* requirements in connection with article 1.051(h).

The Ninth Court addressed *Medley* and article 1.051(h) where a defendant challenged a trial court's denial of his withdrawal of a prior waiver of the **Sixth Amendment** right to counsel. *Glover v. State*, No. 09-06-00325-CR, 2007 WL 5442525, at *6-7 (Tex. App.—Beaumont 2008, no pet.). The court quoted article 1.051(h) then cited *Medley* and other cases for the proposition that a trial court may deny withdrawal of a waiver of counsel when doing so would obstruct the administration of justice. *Glover*, 2007 WL 5442525, at *6; *accord Magness v. State*, No. 01-08-00742-CR, 2010 WL 2431067, at *3-5 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). This was a correct

statement about the Sixth Amendment right to counsel but has no bearing on article 1.051(h).

The Second Court was the first to expressly hold that the statutory right to withdraw a waiver of counsel is subject to the limitations announced in *Medley*. *Lewis v. State*, No. 02-12-00246-CR, 2014 WL 491746, at *3 (Tex. App.—Fort Worth 2014), *pet. dism'd, improvidently granted*, No. PD-307-14, 2015 WL 1759459 (Tex. Crim. App. 2015). The court did not address the statutory language that a defendant may withdraw a waiver of counsel "at any time."

The court below agreed with *Lewis* that these limitations apply to the statutory right to withdraw a waiver of counsel. *Huggins v. State*, No. 10-19-00096-CR, 2021 WL 2827931, at *4-5 (Tex. App.—Waco 2021, pet. filed).

D. These courts have failed to apply the plain statutory language

The court below and others have engrafted additional restrictions on the statutory right to withdraw a waiver of counsel inconsistent with the plain language of article 1.051(h).

A court must apply the plain statutory language unless "application of a statute's plain language would lead to absurd consequences that the

Legislature could not *possibly* have intended." *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

The court below recognized there are both constitutional and statutory rights to withdraw a waiver of counsel but treated these independent rights as identical. *Huggins*, 2021 WL 2827931, at *4. They are not.

Under article 1.051(h), a "defendant may withdraw a waiver of the right to counsel at any time." TEX. CODE CRIM. PROC. art. 1.051(h); *Walker*, 962 S.W.2d at 127-28.

The Legislature further fixed 2 (and only 2) consequences that attach to a defendant's decision to withdraw a waiver of counsel:

(1) The defendant "is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel"; and

(2) "the trial court, in its discretion, may provide the appointed counsel 10 days to prepare."

TEX. CODE CRIM. PROC. art. 1.051(h).

The court below erred by engrafting additional restrictions on the statutory right to withdraw a prior waiver of counsel.

2. What admonishments does *Faretta* (or article 1.051) require for a defendant who initially contests guilt but later pleads guilty?

Faretta held that, when a defendant chooses to exercise the right of self-representation, a trial court must admonish the defendant about the dangers and disadvantages of self-representation. This Court later held that *Faretta* admonishments are not required when a pro se defendant does not contest his guilt. But what of a defendant who initially contests his guilt while representing himself but later pleads guilty.

A. *Faretta* requires admonishments of some form in every pro se case

Faretta recognized the right of self-representation and held that a pro se defendant must "competently and intelligently . . . choose self-representation." *Faretta*, 422 U.S. at 835. To accomplish this, a court must make a defendant "aware of the dangers and disadvantages of self-representation." *Id.*

The Court more recently observed that, while "[w]arnings of the pitfalls of proceeding to trial without counsel . . . must be 'rigorously' conveyed," "a less searching or formal colloquy may suffice" at earlier stages. *Iowa v. Tovar*, 541 U.S. 77, 89 (2004) (quoting *Patterson v. Illinois*, 487 U.S. 285, 298 (1988)).

> *Patterson* describes a "pragmatic approach to the waiver question," one that asks "what purposes a lawyer can serve at the particular stage of the proceedings in question, and what assistance he could provide to an accused at that stage," in order "to determine the scope of the Sixth Amendment right to counsel, and the type of warnings and procedures that should be required before a waiver of that right will be recognized." *Id.*, at 298. We require less rigorous warnings pretrial, *Patterson* explained, not because pretrial proceedings are "less important" than trial, but because, at that stage, "the full dangers and disadvantages of self-representation ... are less substantial and more obvious to an accused than they are at trial." *Id.*, at 299 (citation and internal quotation marks omitted).

Id. at 90.

B. This Court has concluded that *Faretta* does not apply to guilty pleas

This Court held in 1981 that *Faretta* admonishments are not required (at all) for a pro se defendant who does not contest his guilt and pleads guilty. *Johnson v. State*, 614 S.W.2d 116, 119 (Tex. Crim. App. 1981) (op. on reh'g).

The Legislature amended article 1.051(g) in 2007 to provide that a trial court need only "advise the defendant of the nature of the charges against the defendant" if the defendant represents himself and pleads guilty. Act of

May 17, 2007, 80th Leg., R.S., ch. 463, § 1, 2007 Tex. Sess. Law Serv. 822, 822-23.[1]

The court below followed *Johnson* and its progeny to conclude that no admonishments were required because Appellant ultimately pleaded guilty. *Huggins*, 2021 WL 2827931, at *2.

But *Johnson* has its critics. *E.g. Hatten v. State*, 71 S.W.3d 332, 335 (Tex. Crim. App. 2002) (Johnson, J., concurring) (Price, J., dissenting).

> [T]he decision whether to contest guilt is often one that is better made with the assistance of counsel. It is therefore incumbent upon the judicial system to ensure that the decision to forego counsel is made based upon sufficient information and understanding.

Id. (Johnson, J., concurring).

C. This Court's (and the court below's) holdings are inconsistent with *Faretta*

This Court held in *Johnson* that absolutely no *Faretta* admonition is required for a pro se defendant who pleads guilty. But the Supreme Court

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[1] Originally, the statute drew no distinction between defendants who pleaded guilty and those who contested their guilt. *See* Act of May 30, 1987, 70th Leg., R.S., ch. 979, § 1, 1987 Tex. Gen. Laws 3321, 3321-22 (amended 2001). The statute simply provided, "If a defendant desires to waive his right to counsel, the court shall advise him of the dangers and disadvantages of self-representation." *Id.*

made clear in *Tovar* that some admonition is required even if less "formal" or "rigorous." *Tovar*, 541 U.S. at 89-90.

The Court should grant review, reconsider *Johnson*, and clarify the form of admonishments required by *Faretta* for defendants wishing to represent themselves in a criminal proceeding other than a contested trial on the merits.

3. Did the court below correctly conclude that no *Faretta* admonishments were required where Appellant initially contested his guilt?

Even if this Court's holding in *Johnson* is consistent with *Faretta*, the court below erred by applying *Johnson* here because Appellant contested his guilt for nearly 2 years until the day of trial and because there were contested sentencing issues. This is not a case like *Johnson* where the defendant never contested his guilt. Thus, the trial court should have provided *Faretta* admonishments.

A. *Johnson* holds that *Faretta* does not apply to a pro se defendant who does not contest guilt

The Court held in *Johnson* that absolutely no *Faretta* admonition was required for a pro se defendant who "entered a plea of guilty voluntarily, knowingly, and intelligently and did not contest his guilt of the offense for which he was charged." *Johnson*, 614 S.W.2d at 119.

The court below applied *Johnson* and held that no *Faretta* admonition was required because Appellant ultimately pleaded guilty. *Huggins*, 2021 WL 2827931, at *2. However, Appellant contested his guilt for nearly 2 years.

B. But *Faretta* applies so long as a defendant contests guilt

Appellant contested his guilt for nearly 2 years before ultimately entering a guilty plea without the benefit of counsel. The record reflects that Appellant persistently contested his guilt before ultimately entering a guilty plea. He entered that guilty plea without the benefit of counsel while simultaneously informing the trial court that he wanted an attorney to advise him.

Appellant first asserted his right to self-representation at arraignment in April 2017. (2SRR5) Thereafter, the court appointed counsel to represent Appellant in June 2017. (2SCR3) Appellant informed the court a month later that he wanted to represent himself. (2SCR12) The court ultimately granted appointed counsel's motion to withdraw in April 2018 but ordered the substitution of other counsel. (2SCR20)

In a January 2019 hearing, Appellant's appointed counsel informed the court that Appellant had expressed interest in representing himself again. Counsel asked the court to take that matter up with Appellant. After a discussion, Appellant advised the court that he did not want to "fire" his court-appointed counsel. (2RR7-8) Later in the hearing, Appellant appeared

to change his mind, but the court advised that he would not permit him to do so at that time. (2RR13-14)

In a February 2019 hearing, appointed counsel advised the court that Appellant wanted to represent himself. (3RR4) After discussion with Appellant, the court allowed him to represent himself and advised that the case was set for trial a month later. (3RR4-7)

The trial was set to commence on March 11, 2019. After reviewing qualifications and exemptions with the venire panel, the court conducted a hearing outside the presence of the jury. Appellant then advised that he wished to waive his right to jury trial and enter a guilty plea. (5RR28) Then the State began to recite the various provisions of the jury waiver document and whether some of those would be waived because of Appellant's open plea. (5RR30-31)

The court advised Appellant that he would not waive his right to appeal by pleading guilty and the court would appoint appellate counsel if he so desired. (5RR31) Then the following ensued:

Appellant: What about having an attorney right now?

Court: You've already made a choice not to have an attorney.

Appellant: This is like way above my pay grade.

Court: I tried to tell you that twice. You didn't listen to me.

Appellant: So I can't have an attorney now?

Court: No, sir, not at this stage. But you can certainly appeal, based on the fact that you didn't have one, if you want to.

(5RR31-32)

Appellant pleaded "guilty" to the primary offense and "true" to the allegation of a prior felony conviction in Utah. (5RR40) He pleaded "not true" to the allegation of a prior felony conviction in Texas. (5RR40-41) The court confirmed Appellant's intention to waive his right to a jury trial on punishment. The court found him guilty and found the Utah enhancement allegation true. (5RR42) After accepting Appellant's pleas, the court recessed the case until the following morning for the sentencing hearing.

C. *Johnson* does not apply because Appellant contested his guilt

In *Johnson*, the defendant apparently never contested guilt but rather informed the trial court he wanted to waive his right to counsel and plead guilty. *See Johnson*, 614 S.W.2d at 119.

Here, Appellant contested his guilt until the day of trial, yet the trial court never once admonished him about the dangers and disadvantages of

self-representation even though from all appearances he was going to represent himself in a contested jury trial.

For this reason alone, the trial court erred by failing to advise Appellant about the dangers and disadvantages of self-representation. The court below did not find that the trial court admonished Appellant in any respect. *See Huggins*, 2021 WL 2827931, at *2. Rather, the court held that no admonishments were required. *Id.* This was error because Appellant contested his guilty for nearly 2 years and until the day of trial.

D. *Johnson* does not apply because of contested sentencing issues

Even if *Johnson* applies because Appellant ultimately pleaded guilty, *Faretta* and *Tovar* require some form of admonition because of contested sentencing issues.

The record reflects at least 2 contested issues arising from sentencing. First, Appellant did not understand that he could be made to provide his fingerprints for purposes of proving a prior enhancement allegation. (6RR6-8) And second, Appellant contested one of the enhancement allegations. (5RR40-41)

In *Tovar* and *Patterson*, the Supreme Court explained that the required admonishments vary depending on the nature of the proceeding. This

"pragmatic approach" asks "what purposes a lawyer can serve at the particular stage of the proceedings in question, and what assistance he could provide to an accused at that stage." *Tovar*, 541 U.S. at 89 (quoting *Patterson*, 487 U.S. at 298).

Sentencing is a critical stage of criminal proceedings. *Gardner v. Florida*, 430 U.S. 349, 358 (1977); *Venegas v. State*, 560 S.W.3d 337, 353 (Tex. App.—San Antonio 2018, no pet.). A pro se defendant who has been found guilty has the right to withdraw a prior waiver of counsel for the sentencing proceeding. *See Walker*, 962 S.W.2d at 127-28.

Thus, at minimum, the trial court should have admonished Appellant about the dangers and disadvantages of self-representation in a sentencing hearing where the State has alleged prior convictions for enhancement purposes.

The court below erred by holding otherwise.

Prayer

ACCORDINGLY, Appellant Noel Christopher Huggins asks the Court to: (1) grant review on the issue presented in this petition for discretionary review; and (2) grant such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

/s/ Alan Bennett
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Certificate of Compliance

The undersigned hereby certifies, pursuant to Rule of Appellate Procedure 9.4(i)(3), that this computer-generated document contains 4,230 words in its entirety.

/s/ Alan Bennett
E. Alan Bennett

Certificate of Service

The undersigned hereby certifies that a true and correct copy of this petition was served electronically on August 5, 2021 to: (1) counsel for the State, Mark Pratt; and (2) the State Prosecuting Attorney.

/s/ Alan Bennett
E. Alan Bennett

Appendix

1. *Huggins v. State*, No. 10-19-00096-CR, 2021 WL 2827931 (Tex. App.—Waco July 7, 2021, pet. filed)

2021 WL 2827931
Only the Westlaw citation is currently available.

Court of Appeals of Texas, Waco.

Noel Christopher HUGGINS, Appellant

v.

The STATE of Texas, Appellee

No. 10-19-00096-CR
|
Opinion delivered and filed July 7, 2021

Synopsis

Background: Defendant was convicted on guilty plea in the 66th District Court, Hill County, of possession of less than one gram of methamphetamine, and sentenced to 18 years' incarceration. Defendant appealed.

Holdings: The Court of Appeals, Johnson, J., held that:

[1] defendant's waiver of his right to counsel was knowing, voluntary, and intelligent, and

[2] defendant failed to establish that withdrawal of his waiver of right to counsel a second time would not interfere with orderly administration of court business, result in unnecessary delay or inconvenience, or prejudice State.

Affirmed.

West Headnotes (19)

[1] Criminal Law

The Sixth and Fourteenth Amendments to the United States Constitution give criminal defendants in state courts a constitutional right to counsel and the corresponding right to self-representation. U.S. Const. Amends. 6, 14.

[2] Criminal Law

The right to self-representation does not attach until it has been clearly and unequivocably asserted. U.S. Const. Amends. 6, 14.

[3] Criminal Law

Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently choose self-representation, he should be made aware of the dangers that he is doing so.

[4] Criminal Law

Prior to any act of self-representation by the defendant, the record should reflect that *Faretta* admonishments were given to the defendant.

[5] Criminal Law

When advising defendant about dangers and disadvantages of self-representation, trial judge must inform defendant that there are technical rules of evidence and procedure, and he will not be granted any special consideration solely because he asserted his pro se rights.

[6] Criminal Law

Where the defendant appears in court without representation and confesses guilt, the issue is not whether the trial court admonished the accused of the dangers and disadvantages of self-representation, but rather whether there was a knowing, voluntary, and intelligent waiver of counsel; thus, an admonishment as to the dangers and disadvantages of self-representation need only be given in cases in which the defendant's guilt is contested.

[7] Criminal Law

Texas Code of Criminal Procedure does not require the court to admonish a defendant regarding the dangers and disadvantages of self-representation before approving a waiver of defendant's right to counsel and accepting a plea of guilty. U.S. Const. Amend. 6.; Tex. Crim. Proc. Code Ann. art. 1.051.

[8] Criminal Law

Courts indulge every reasonable presumption against waiver of the right to counsel and do not presume acquiescence in the loss of fundamental rights. U.S. Const. Amend. 6.

[9] Criminal Law

The trial judge is responsible for determining whether a defendant's waiver of right to counsel is knowing, intelligent, and voluntary. U.S. Const. Amend. 6.

[10] Criminal Law

In assessing whether a defendant's waiver of counsel was knowingly and intelligently made, courts consider the totality of the circumstances, the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused. U.S. Const. Amend. 6.

[11] Criminal Law

Trial court need not follow formulaic questioning or particular script to evaluate defendant's waiver of counsel. U.S. Const. Amend. 6.

[12] Criminal Law

Defendant's waiver of his right to counsel was knowing, voluntary, and intelligent; defendant twice received, reviewed, and signed a document entitled "Waiver of Counsel," whereby he knowingly waived his right to representation by counsel and requested that court proceed with his case without an attorney being appointed for him, nothing in record demonstrated that defendant did not understand that he was waiving his right to counsel by signing the document, and defendant's conversations with trial judge made clear that he understood English and had a reasonable understanding of the legal process. U.S. Const. Amend. 6.

[13] Criminal Law

Defendant may waive right to counsel and represent himself or herself. U.S. Const. Amend. 6.

[14] Criminal Law

Defendant may waive his right to represent himself after asserting that right. U.S. Const. Amend. 6.

[15] Criminal Law

A defendant's constitutional and statutory rights to withdraw his waiver of the right to counsel are not without limits; a trial court may deny a request to withdraw the waiver when doing so would obstruct orderly procedure and interfere with the fair administration of justice. U.S. Const. Amend. 6.; Tex. Crim. Proc. Code Ann. art. 1.051(h).

[16] Criminal Law

Defendant does not have the right to repeatedly alternate his position on the right to counsel and thereby delay trial. U.S. Const. Amend. 6.

[17] Criminal Law

Trial court's decision as to effect withdrawal of defendant's waiver of right to counsel would have on orderly administration of justice will not be disturbed on appeal absent abuse of discretion. U.S. Const. Amend. 6.

[18] Criminal Law

Defendant who has waived right to counsel but then seeks to reclaim that right bears burden of showing that his waiver would not interfere with orderly administration of court business, result in unnecessary delay or inconvenience to witnesses, or prejudice state; if evidence presented by defendant is rebutted by state, trial court, or record, then trial court does not abuse its discretion in refusing to allow right to be reclaimed. U.S. Const. Amend. 6.

[19] Criminal Law

Defendant failed to establish that withdrawal of his waiver of right to counsel a second time would not interfere with orderly administration of court business, result in unnecessary delay or inconvenience, or prejudice State, and thus trial court did not act outside zone of reasonable disagreement by denying his withdrawal request; trial court permitted defendant to waive his right to counsel and represent himself, then accepted his withdrawal of waiver and appointed second attorney, and allowed defendant to reassert his right to self-representation again, but denied his subsequent request, as defendant appeared to be attempting to manipulate system by invoking right to self-representation in order to have his pro se motions heard before attempting to reassert his right to appointed counsel. U.S. Const. Amend. 6.

From the 66th District Court, Hill County, Texas, Trial Court No. F071-17

Attorneys and Law Firms

E. Alan Bennett, Waco, for Appellant.

Matthew M. Boyle, Mark F. Pratt, Hillsboro, for Appellee.

Before Chief Justice Gray, Justice Johnson, and Visiting Justice Wright[1]

OPINION

MATT JOHNSON, Justice

***1** Appellant, Noel Christopher Huggins, pleaded guilty to possession of less than one gram of methamphetamine. *See* Tex. Health & Safety Code Ann. § 481.115. Appellant also pleaded "true" to one of two enhancement paragraphs contained in the indictment.[2] The trial court accepted appellant's guilty plea, found both of the enhancement paragraphs to be true, and sentenced appellant to eighteen years' incarceration.

In two issues, appellant contends that: (1) his waivers of counsel were not made knowingly and intelligently because the trial court did not admonish him about the dangers and disadvantages of self-representation; and (2) the trial court denied him his statutory right to withdraw his waiver of the right to counsel under article 1.051(h) of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 1.051(h). We affirm.

I. Appellant's Waiver of Counsel

In his first issue, appellant argues that the failure of the trial court to admonish him about the dangers and disadvantages of self-representation under *Faretta v. California* rendered his waivers of the right to counsel unknowing and involuntary. *See* 422 U.S. 806, 835-36, 95 S. Ct. 2525, 2541, 45 L.Ed.2d 562 (1975).

[1] [2] [3] [4] [5] First, we address appellant's complaint about the trial court's failure to provide *Faretta* admonishments about the dangers and disadvantages of self-representation. *See Faretta*, 422 U.S. at 835-36, 95 S. Ct. at 2541. The Sixth and Fourteenth Amendments to the United States Constitution give criminal defendants in state courts a constitutional right to counsel and the corresponding right to self-representation. *See id.* at 818-20, 95 S. Ct. at 2532-33; *see also* Tex. Code Crim. Proc. Ann. art. 1.051(f) ("A defendant may voluntarily and intelligently waive in writing the right to counsel."). "However, 'the right to self-representation does not attach until it has been clearly and unequivocably asserted.' " *Williams v. State*, 252 S.W.3d 353, 356 (Tex. Crim. App. 2008) (quoting *Funderburg v. State*, 717 S.W.2d 637, 642 (Tex. Crim. App. 1986) (citing *Faretta*, 422 U.S. at 825, 95 S. Ct. at 2536)). "Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation,

he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.' " *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541 (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S. Ct. 236, 242, 87 L. Ed. 268 (1942)). "Prior to any act of self-representation by the defendant, the record should reflect that the admonishments were given to the defendant." *Goffney v. State*, 843 S.W.2d 583, 585 (Tex. Crim. App. 1992). "When advising a defendant about the dangers and disadvantages of self-representation, the trial judge must inform the defendant 'that there are technical rules of evidence and procedure, and he will not be granted any special consideration solely because he asserted his pro se rights.' " *Williams*, 252 S.W.3d at 356 (quoting *Johnson v. State*, 760 S.W.2d 277, 279 (Tex. Crim. App. 1988)).

***2** **[6]** **[7]** However, despite the foregoing, the Court of Criminal Appeals distinguished *Faretta*, holding that the trial court is not required to admonish the defendant about the dangers and disadvantages of self-representation when the defendant does not contest his guilt. *See Hatten v. State*, 71 S.W.3d 332, 334 (Tex. Crim. App. 2002); *see also Johnson v. State*, 614 S.W.2d 116, 119 (Tex. Crim. App. 1981) (op. on reh'g); *McCain v. State*, 24 S.W.3d 565, 568 (Tex. App.—Waco 2000), *aff'd*, 67 S.W.3d 204 (Tex. Crim. App. 2002). As this Court has previously recognized,

> Where the defendant appears in court without representation and confesses guilt, the issue is not whether the trial court admonished the accused of the dangers and disadvantages of self-representation, but rather whether there was a knowing, voluntary, and intelligent waiver of counsel. Thus, an admonishment as to the dangers and disadvantages of self-representation need only be given in cases in which the defendant's guilt is contested.

McCain, 24 S.W.3d at 569. We further noted that "article 1.051 of the Texas Code of Criminal Procedure does not require the court to admonish a defendant regarding the dangers and disadvantages of self-representation before approving a waiver of defendant's right to counsel and accepting a plea of guilty." *Id.* (citing *State v. Finstad*, 866 S.W.2d 815, 817 (Tex. App.—Waco 1993, pet. ref'd)).

In the instant case, appellant did not contest his guilt to the charged offense of possession of less than one gram of methamphetamine. Therefore, because appellant did not contest his guilt, the trial court was not required to admonish him as to the dangers and disadvantages of self-representation. *See Hatten*, 71 S.W.3d at 334; *Johnson*, 614 S.W.2d at 119; *see also McCain*, 24 S.W.3d at 569.[3]

Nevertheless, regarding *Faretta* admonishments, appellant asserts that the *Hatten* and *Johnson* decisions are inapplicable to felony cases and are, instead, confined solely to misdemeanors. Appellant cites an unpublished 2009 memorandum opinion from the Amarillo Court of Appeals in support of his argument. *See, e.g., Castaneda v. State*, No. 07-07-0122-CR, 2009 WL 2225821 at *2, 2009 Tex. App. LEXIS 5749 at *7 (Tex. App.—Amarillo July 27, 2009, no pet.) ("The State relies on the holding of *Hatten*, 71 S.W.3d at 334, distinguishing between defendants who contest their guilt and those who appear without an attorney to plead guilty or nolo contendere. But the Court of Criminal Appeals limited that holding to misdemeanor defendants.... We are unable to find an instance in which the distinction has been applied to a felony conviction, and we decline to extend the holding to appellant.").

Notwithstanding the fact that the *Castaneda* opinion is not binding on this Court, we note that *Castaneda* conflicts with this Court's own precedents in *McCain* and *Finstad*—neither of which we are inclined to overrule on these facts. *See McCain*, 24 S.W.3d at 568; *Finstad*, 866 S.W.2d at 817; *see also Carroll v. State*, 101 S.W.3d 454, 459 (Tex. Crim. App. 2003) (" 'We follow the doctrine of stare decisis to promote judicial efficiency and consistency, encourage reliance on judicial decisions, and contribute to the integrity of the judicial process.' " (quoting *Paulson v. State*, 28 S.W.3d 570, 571-72 (Tex. Crim. App. 2000)). Furthermore, we note that, according to *Hatten*, whether *Faretta* warnings are required turns not on whether the case is a felony or a misdemeanor, but rather whether the defendant contested guilt. *Hatten*, 71 S.W.3d at 334. The *Hatten* Court only included misdemeanor language in its opinion because the offense involved was a misdemeanor. *Id.* Thus, we are not persuaded by appellant's contention that *Faretta* admonishments were required, even though appellant did not contest his guilt to the charged offense. Nor are we persuaded by appellant's reliance on the unpublished *Castaneda* opinion.

***3** However, the analysis above does not resolve the question of whether appellant's waiver of the right to counsel was proper. As such, we must now determine whether the record demonstrates that appellant knowingly, voluntarily, and intelligently waived his right to counsel. *McCain*, 24 S.W.3d at 569.

[8] **[9]** **[10]** **[11]** " '[C]ourts indulge every reasonable presumption against waiver' and ... 'do not presume acquiescence in the loss of fundamental rights.' " *Williams*, 252 S.W.3d at 356 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461 (1938)). "The trial judge is responsible for determining whether a defendant's waiver is knowing, intelligent, and voluntary." *Id.* (citing *Zerbst*, 304 U.S. at 465, 58 S. Ct. at 1023). In assessing whether a defendant's waiver of counsel was knowingly and intelligently made, we "consider the totality of the circumstances," "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.' " *Williams*, 252 S.W.3d at 356 (quoting *Zerbst*, 304 U.S. at 464, 58 S. Ct. at 1023). However, the trial court need not follow a "formulaic questioning" or a particular "script" to evaluate a defendant's waiver of counsel. *Blankenship v. State*, 673 S.W.2d 578, 583 (Tex. Crim. App. 1984).

[12] Here, appellant twice received, reviewed, and signed a document entitled, "Waiver of Counsel," whereby he knowingly waived his "right to representation by counsel, and request[ed] the Court to proceed with my case without an attorney being appointed for me." *See Johnson*, 614 S.W.2d at 120 ("The record conclusively shows appellant was totally aware of his right to counsel, but due to the punishment assessed by the trial court, he now "second guesses" himself about his decision to appear in court without counsel. "Second guessing" is not the equivalent nor is it synonymous with being deprived of one's right to counsel, and we so hold."). Nothing in the record demonstrates that appellant did not understand that he was waiving his right to counsel by signing the "Waiver of Counsel" document. *See Blocker v. State*, 889 S.W.2d 506, 508 (Tex. App.—Houston [14th Dist.] 1994, no pet.) (holding that the evidence was sufficient to support a finding of a knowing, voluntary, and intelligent waiver where the defendant signed a waiver statement and no contradictory evidence was found in the record). Furthermore, in his conversations on the record with the trial judge, it is clear that appellant understood English and had a reasonable understanding of the legal process, including his own statements reflecting an understanding of the discovery process in this case. In addition, the two enhancement allegations contained in the indictment and found "true" by the trial court indicated appellant's prior experience and familiarity with the criminal-justice system. Appellant also informed the trial court that he "recently got clean.... I'm going to school full-time at Hill College, trying to get my life in order." Based on the totality of the circumstances, we conclude that the record is sufficient to support the trial court's implicit finding that appellant's waivers of the right to counsel were knowing, voluntary, and intelligent and, thus, were valid. *See McCain*, 24 S.W.3d at 570. We therefore overrule appellant's first issue.

II. Appellant's Withdrawal of his Waiver of Counsel

***4** In his second issue, appellant asserts that the trial court improperly denied his statutory right to withdraw his waiver of the right to counsel under article 1.051(h), which provides that a defendant may withdraw his waiver of the right to counsel "at any time." *See* Tex. Code Crim. Proc. Ann. art. 1.051(h).

[13] **[14]** As stated above, a defendant may waive the right to counsel and represent himself or herself. *See Faretta*, 422 U.S. at 819-20, 95 S. Ct. at 2532; *see also* Tex. Code Crim. Proc. Ann. art. 1.051(h). A defendant may also waive his right to represent himself after asserting that right. *McKaskle v. Wiggins*, 465 U.S. 168, 181-82, 104 S. Ct. 944, 954, 79 L. Ed. 2d 122 (1984); *see Funderburg*, 717 S.W.2d at 642 & n.5 (describing a waiver of the right to represent oneself as a "waiver of a waiver"). Indeed, article 1.051(h) of the Code of Criminal Procedure provides that:

> A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Tex. Code Crim. Proc. Ann. art. 1.051(h).

[15] **[16]** However, a defendant's constitutional and statutory rights to withdraw his waiver of the right to counsel are not without limits. *See Medley v. State*, 47 S.W.3d 17, 23 (Tex. App.—Amarillo 2000, pet. ref'd); *see also Lewis v. State*, No. 02-12-00246-CR, 2014 WL 491746 at *3, 2014 Tex. App. LEXIS 1405 at **7-8 (Tex. App.—Fort Worth Feb. 6, 2014, pet. dism'd) (mem. op., not designated for publication) (noting that a defendant's constitutional and statutory rights to withdraw his waiver of the right to counsel are limited by the trial court's duty and discretion to ensure an orderly administration of justice.). A trial court may deny a request to withdraw the waiver when doing so would obstruct orderly procedure and interfere with the fair administration

of justice. *See Medley*, 47 S.W.3d at 23 ("Trial courts have the duty, and discretion, to maintain the orderly flow and administration of judicial proceedings, including the exercise of a defendant's right to counsel." (citing *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46)); *see also Marquez v. State*, 921 S.W.2d 217, 219 (Tex. Crim. App. 1996) (reviewing the withdrawal of a waiver of the Sixth Amendment right to a jury trial). Moreover, a defendant may not use his right to counsel to manipulate the court or to delay his trial. *See Culverhouse v. State*, 755 S.W.2d 856, 861 (Tex. Crim. App. 1988). As stated in *Medley*, a defendant "does not have the right to repeatedly alternate his position on the right to counsel and thereby delay trial." 47 S.W.3d at 23; *see Johnson v. State*, 257 S.W.3d 778, 781 (Tex. App.—Texarkana 2008, pet. ref'd) ("Constitutional protections connected with the right to counsel may not be so manipulated as to delay or obstruct the trial process." (citation omitted)).

[17] The trial court's decision as to the effect the withdrawal of a defendant's waiver of the right to counsel would have on the orderly administration of justice will not be disturbed on appeal absent an abuse of discretion. *Medley*, 47 S.W.3d at 24; *see Marquez*, 921 S.W.2d at 222-23. "It will be presumed, in the absence of a showing to the contrary, that the discretionary powers of the [trial] court have been wisely exercised." *Marquez*, 921 S.W.2d at 223.

***5 [18]** A defendant who has waived the right to counsel but then seeks to reclaim that right bears the burden of showing that his waiver would not: (1) interfere with the orderly administration of court business; (2) result in unnecessary delay or inconvenience to witnesses; or (3) prejudice the State. *Medley*, 47 S.W.3d at 23. If the evidence presented by the defendant is rebutted by the State, the trial court, or the record, then the trial court does not abuse its discretion in refusing to allow the right to be reclaimed. *Id.*

[19] In the instant case, the trial court appointed counsel for appellant and permitted appellant to waive his right to counsel and represent himself. The trial court then accepted appellant's withdrawal of his waiver of his right to counsel and appointed appellant a second attorney. Thereafter, appellant reasserted his right to self-representation. In denying appellant's subsequent requests to withdraw his waiver of his right to counsel, the trial court recounted that appellant had been appointed two attorneys, but appellant "got rid of both of them."

Further, appellant did not express a desire to plead guilty until there were seventy-one people in the courtroom for the venire panel. Moreover, as conveyed at the February 7, 2019 pre-trial hearing, appellant acknowledged that he fired one of his attorneys, so that he could file numerous pro se motions before trial. The record makes clear that the trial court concluded that appellant was attempting to manipulate the system by invoking his right to self-representation in order to have his pro se motions heard before attempting to reassert his right to appointed counsel. Furthermore, there is nothing in the record showing that the trial would not have been delayed if the trial court had appointed appellant another attorney.

Because appellant does not meet his burden of showing that the withdrawal of his waiver of the right to counsel would not interfere with the orderly administration of court business, result in unnecessary delay or inconvenience, or prejudice the State, and because appellant does not have the right to repeatedly alternate his position on the right to counsel and thereby delay trial, we cannot say that the trial court acted outside the zone of reasonable disagreement by denying appellant's second and subsequent requests to withdraw his prior waiver of the right to counsel. *See Marquez*, 921 S.W.2d at 223; *see also Medley*, 47 S.W.3d at 23-24. We overrule appellant's second issue.

III. Conclusion

Having overruled both of appellant's issues, we affirm the judgment of the trial court.

All Citations

--- S.W.3d ----, 2021 WL 2827931

Footnotes

1 The Honorable Jim R. Wright, Senior Chief Justice (Retired) of the Eleventh Court of Appeals, sitting by assignment of the Chief Justice of the Texas Supreme Court. *See* Tex. Gov't Code Ann. §§ 74.003, 75.002, 75.003.

2 Appellant pleaded "not true" to the enhancement paragraph pertaining to his prior conviction for failure to register as a sex offender.

3 In *McCain*, this Court specifically stated:

> We acknowledge the tension between the concepts of a defendant who without the benefit of counsel decides not to contest his guilt and had not been cautioned of the dangers of self-representation, and a defendant properly admonished who may decide to have counsel appointed and then choose to contest his guilt. However, we will not resolve this tension. *Johnson* is controlling in this instance.

24 S.W.3d 565, 569 (Tex. App.—Waco 2000), *aff'd*, 67 S.W.3d 204 (Tex. Crim. App. 2002).

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